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SUBJECT: ORACLE CONCERNED OVER EU INVESTIGATION OF SUN MERGER

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¶1. (SBU) SUMMARY. Oracle visited USEU October 21 over concerns that its \$7.4 billion plan to acquire Sun Microsystems is at risk of being blocked by the European Commission. The merger, approved by USDOJ in August, is under review by the Commission. USDOJ is coordinating closely with the Commission to try to prevent a divergent outcome in this matter. Oracle expects the Commission to issue a Statement of Objections shortly. A Statement of Objections is a normal part of a Commission merger review, and the Commission has until January 19 to approve or prohibit the merger. Oracle says it is unwilling or unable to make certain divestitures to satisfy the Commission's concerns, and that merger failure will cause Sun to go bankrupt. Sun announced October 20 that it is cutting 3000 jobs over the next year, as a result of delays in receiving merger clearance from the Commission. END SUMMARY.

EUROPEAN COMMISSION'S ORACLE-SUN MERGER REVIEW

¶2. (SBU) Oracle President Safra Catz met the week of October 20 with European Union Competition Commissioner Neelie Kroes to discuss the company's concerns over the Commission's review of the proposed \$7.4 billion Oracle - Sun merger. Oracle also visited the U.S. Mission October 21 to urge the U.S. to push for rapid European Commission approval of the merger.

¶3. (SBU) The Oracle-Sun merger, announced last spring, was approved by the U.S. Justice Department (DOJ) in August. The Commission opened a second phase investigation of the merger in September. The Commission is concerned that Oracle will hamper development of MySQL, an open-source database that competes with Oracle and with products of several other firms, such as Microsoft and IBM. DOJ investigated this aspect of the transaction during its own review and concluded otherwise.

¶4. (SBU) Oracle said that the DG COMP case team told the company to expect a formal "Statement of Objections" (formal charge of violation of EU competition law) soon. If a Statement of Objections (SO) is issued, Oracle and Sun will then have the right to an oral hearing to defend the merger. The Commission has until January 19 to issue a final decision approving or blocking the merger. Commission phase II proceedings historically result in merger prohibitions only about 10 percent of the time, but around half of cases are cleared subject to conditions such as divestitures. A Statement of Objections is a normal step in many of these cases, which often results in intensified negotiations.

¶5. (SBU) Oracle stated that the Commission is pressuring it to divest MySQL as a condition for approval of the merger. Oracle claims such a divestiture will destroy the merger for two reasons: 1) Oracle's business case for the merger depends on keeping MySQL to make the merger economically viable, since Oracle plans to expand the market for MySQL and its associated support contracts; and (2) Oracle would be forced to take a huge accounting loss if it sold MySQL, since it believes that Sun overpaid in paying nearly \$1 billion for MySQL in 2008, and it would only be able to sell it for a fraction of this sum.

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the Commission and that it has disproved the Commission contention that significant competition problems exist. While this may appear to be a standoff, additional discussions between the company and DG COMP seem to be underway.

¶9. (SBU) DOJ/Antitrust views this matter as a high priority. Its senior officials and investigative staff are currently engaging productively and intensely with their DG COMP counterparts, and are in close touch with Oracle and Sun, in the hopes of preventing a divergent outcome. END COMMENT.

¶10. (U) This cable has been cleared by USDOJ's antitrust division.

MURRAY